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No. 91-1103

In the
Supreme Court of the United States

OCTOBER TERM, 1991

CENTRAL GMC, INC.,
Petitioner,

v.

GENERAL MOTORS CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

The respondent, General Motors Corporation, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the Fourth Circuit's opinion in this case. That opinion is reported at 946 F.2d 327 (1991).[1]

[1] Pursuant to Supreme Court Rule 29.1, Respondent General Motors Corporation has listed in the Appendix hereto those corporations in which it holds more than 50% but less than 100% of outstanding (voting) shares. General Motors has no parent companies to designate pursuant to Rule 29.1.

Statement of the Case

Central GMC, Inc. ("Central") is a truck dealer in Landover, Maryland, which carries GMC, Mercedes, Kenworth and Iveco trucks. General Motors Corporation ("General Motors" or "GM") is a manufacturer of motor vehicles including trucks produced and distributed by its GMC Truck Division ("GMC Truck").

In 1985, Central and General Motors entered into a GMC Truck Dealer Sales and Service Agreement. Under this Agreement, Central was granted the right to identify itself as an "authorized GMC Truck Dealer" and to use GM trade names and trademarks. Joint Appendix ("JA") 40, 70. Central was also given a "nonexclusive right to buy the new GMC Truck motor vehicles identified in the Motor Vehicle Addend[a]" attached to the GMC Truck Dealer Agreement. Four such addenda listed the various GMC Truck models available for purchase by Central and were changed from time to time as models were added or discontinued by GMC Truck. JA 25, 51-54.

One of these "motor vehicle addenda" listed four GMC "heavy duty" truck models.[2] This heavy duty truck addendum stated that it would "remain in effect unless canceled or until superseded by a new Motor Vehicle Addendum." *Id.* In addition, the GMC Truck Dealer Agreement stated that "General Motors may discontinue any line of Product" and that GM would not be liable for failure to deliver any product as a result of "any discontinuance of manufacture or sale." JA 64.

During the late 1970s and early 1980s, General Motors lost a considerable share of the market for heavy duty trucks and suffered substantial losses on the production and sale of its

[2] The models were the "Astro," "General," "Brigadier J-8000" and "Brigadier J-9500." Of the remaining three Addenda, two pertained to "medium duty" truck models and one listed "light duty" models.

heavy truck models. As a result, in 1986, General Motors decided to discontinue manufacturing these models and so notified its dealers (including Central). JA 25-27.

Effective December 31, 1987, GM ceased marketing its four heavy duty truck models and canceled the motor vehicle addendum to the GMC Truck Dealer Agreement which listed these models. GM also discontinued production of these models during 1987 and 1988 and dismantled, retooled and/or sold its facilities, equipment and other assets previously devoted to their manufacture and sale.[3] Thereafter, although GM no longer offered heavy duty trucks for sale, Central's GMC Truck Dealer Agreement remained in effect and Central continued to act as a fully authorized GMC Truck dealer, able to buy and resell all of the dozens of truck models which continued to be marketed by GMC Truck. JA 26.

Central commenced this action on December 30, 1987, alleging that GM's discontinuation of the GMC heavy duty truck models amounted to a wrongful termination of Central's "franchise," in violation of the Maryland Transportation Code, Section 15-209.[4] On GM's motion for summary judgment, the district court rejected GM's contention that Central's franchise for GMC trucks, namely, the GMC Truck Dealer Agreement, had not been terminated. Instead, the court found that Central had a separate "franchise" for heavy duty truck models only, and granted summary judgment for plaintiff on liability. There-

[3] Some of these assets were conveyed to a new corporation formed by AB Volvo, a Swedish motor vehicle manufacturer, its subsidiaries and General Motors. In exchange for these assets, General Motors received a minority stock interest in the corporation, known as Volvo GM Heavy Truck Corporation. Volvo became the majority stockholder and designated a majority of the members of its Board of Directors. General Motors had no involvement in the corporation's day-to-day activities. JA 28.

[4] Section 15-209(a) provides that "[a] manufacturer may not terminate . . . the franchise of a dealer, notwithstanding any term or provision of the franchise, unless: (1) the dealer has failed to comply substantially with the reasonable requirements of the franchise."

after, following a bench trial on damages, the court awarded Central $1,850,701 as the "fair value" of its "franchise" for heavy duty trucks, together with $277,605 in prejudgment interest.[5]

On appeal, the Court of Appeals for the Fourth Circuit reversed, holding that GM's discontinuation of its four heavy duty truck models did not constitute a termination of Central's franchise under the Maryland Transportation Code. Relying on the definition of "franchise" set forth in the Code,[6] the court of appeals concluded that Central had one franchise for the sale of GMC trucks, and that the motor vehicle addenda appended to the Dealer Agreement were "not separate arrangements [or franchises] between the parties, but rather constituent parts of the whole Truck Dealer Agreement." 946 F.2d at 331 (citation omitted). The court concluded that "GMC has discontinued a product but has not terminated a franchise." *Id.* at 332.[7]

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[5] Section 15-209(f)(1) of the Maryland Transportation Code provides that "[i]n addition to any administrative and criminal sanctions imposed under this subtitle, a manufacturer . . . that terminates, cancels, or fails to renew the franchise of a dealer in violation of this section shall pay to the dealer the fair value of his business as a going concern."

[6] Section 11-125 of the Maryland Transportation Code defines franchise as:

> a written arrangement, whether or not for a definite period, in which a manufacturer, distributor, or factory branch grants to a dealer or distributor a license or right to use a trade name, trademark, service mark, or related characteristic in the sale, leasing, or servicing of new vehicles.

[7] The court added that the interpretation of the Maryland Transportation Code proffered by Central "raises Commerce Clause concerns." 946 F.2d at 334. This constitutional concern was avoided by the court of appeals' interpretation of the Transportation Code, which was independently supported by the Code's "language and purposes." 946 F.2d at 335.

Reasons Why the Petition Should Be Denied

I. No Important Federal Question Is Raised by the Decision Below

This is a diversity action involving the interpretation of a Maryland statute regulating the distribution of motor vehicles within the State. No federal question of any kind — let alone an *important* federal question — is implicated by the decision or record below. The decision is limited to the application of a state statute to a contract between two parties. Under these circumstances, review by this Court is plainly unwarranted. *Huddleston* v. *Dwyer*, 322 U.S. 232, 237 (1944) ("ordinarily we [do not] accept and therefore do not review, save in exceptional cases, the considered determination of questions of state law by the intermediate federal appellate courts"). *See also Haring* v. *Prosise*, 462 U.S. 306, 314 n.8 (1983).

Central attempts to create the appearance of an important federal question by arguing that the Fourth Circuit acted "in disregard" of established summary judgment standards. Pet. 6. In support of its thesis, Central points to the fact that "the Fourth Circuit did not cite *Anderson*, *Celotex*, or any other case relating to summary judgment principles." Pet. 7.

This argument is clearly a contrivance. The court of appeals properly applied the definition of "franchise" set forth in the Maryland Transportation Code to the GMC Truck Dealer Agreement between the parties. There was never any dispute as to the authenticity or substance of that Agreement; rather, the only issue was one of law — whether the Dealer Agreement constituted one "franchise," as maintained by GM, or several "franchises," as Central argued.

Central's claim that the Fourth Circuit "ignored" facts pertaining to whether the parties "treated the heavy duty business

as separate and distinct from the medium and light duty businesses" (Pet. 10) itself ignores the court of appeals' opinion. The court specifically considered and rejected Central's claim:

> Central also contends that it has a franchise in heavy duty trucks because GMC treated the sales and service of these trucks differently than it treated light and medium duty trucks. . . . We are unpersuaded, however. . . . The Maryland statute defines franchises not in terms of whether product lines occupy a distinct niche or are geared to different markets, but rather in terms of written arrangements and the license and right to use a trade name. To adopt Central's proposed approach is not only contrary to the statutory directive but it would also introduce substantial uncertainty into business relationships. . . . The language of the Maryland statute avoids these problems and leads us to the conclusion that GMC has discontinued a product but has not terminated a franchise.

946 F.2d at 332 (citation omitted). Accordingly, the court of appeals did not depart from the summary judgment standards enunciated by this Court. *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1985) ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment"). On the contrary, it appropriately concluded that the issues raised by Central were not material to the determination of Central's "franchise" under Maryland law.[8] Such a determination within

[8] Contrary to Central's assertion, at no time did GM concede the existence of disputed issues of *material* fact. Rather, GM consistently maintained that Central's proffered evidence of the distinctiveness of heavy duty truck models was irrelevant, but in any event, disputed. The fact that GM disputed irrelevant facts obviously did not preclude summary judgment in its favor.

the particularized factual context of this case is not a proper subject of review by this Court *United States* v. *Johnston*, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts").

Likewise, Central's exaggerated claim as to the public impact of the decision below does not justify this Court's review. Central asserts that the court of appeals' decision "has eviscerated" the applicable provision of Maryland's Transportation Code, "rendering it impotent." Pet. 19. Central warns that "if the ruling in this case is permitted to stand, the legislatures of those states in [the Fourth] Circuit will be powerless to prevent manufacturers from imposing the costs of their business decisions upon their dealers." *Id.* Ultimately, according to Central, the opinion below "alarmingly impacts upon the rights of every person in the United States who has substantially invested in a franchise." *Id.*

This fantastic "parade of horribles" imagined by Central has no basis in reality. The decision below held only that the GMC Truck Dealer Agreement between the parties constituted a single franchise. It will have little, if any, practical effect on anyone other than the parties herein and, perhaps, a handful of GMC truck dealers who make claims similar to Central's under analogous statutes in other states. The decision neither "eviscerates" the regulation, nor does it render the Maryland General Assembly (or judiciary) "powerless" to change it. Moreover, Central's claim that the Fourth Circuit's decision will have a substantial and adverse public impact is belied by the fact that numerous states (and Congress) have adopted

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> The contention of one party that there are no issues of material fact preventing entry of judgment in its favor does not bar that party from asserting that there are issues of fact sufficient to prevent the entry of judgment as a matter of law against it.

Schwabenbauer v. *Board of Education*, 667 F.2d 305, 313 (2d Cir. 1981).

legislation which specifically recognizes a manufacturer's right to discontinue products.[9] Central's argument is without merit and provides no basis for granting the Petition.

II. The Decision Below Does Not Conflict With Any Decision by Another Court of Appeals

Central disingenuously claims that the decision below conflicts with the Second Circuit's opinion in *Arthur Glick Truck Sales, Inc.* v. *General Motors Corp.*, 865 F.2d 494 (2d Cir. 1989). The *Glick* decision is obviously distinguishable in that the statute *sub judice* in the Second Circuit was a different regulation adopted by a different state: New York Vehicle and Traffic Law, Section 462(6).[10] The fact that the Second Circuit

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[9] *See, e.g.*, Ill. Rev. Stat. c.121-½, § 754(d)(6)(c) (no violation of state franchise law where "manufacturer permanently discontinues the manufacture or assembly of motor vehicles of such line make"); Iowa Code Ann. § 322A.2 (franchisor may discontinue "a particular line-make" of motor vehicles); Maine Rev. Stat. Ann. tit. 10, § 1174(P)(4) (manufacturer entitled to "discontinu[e] production or distribution of the franchise product"); Missouri Ann. Stat. § 407.825(5)(b) (exempting "the discontinuance of the sale in the state of Missouri of such motor vehicle franchisor's products"); Neb. Rev. Stat. § 60-1420 ("a franchisor may terminate a franchise for a particular line-make if the franchisor discontinues that line-make"). *See also Jim Barnett Motors, Inc.* v. *Ford Motor Co.*, 355 F.2d 502 (5th Cir. 1966) (Ford's discontinuation of the Edsel did not violate the Federal Automobile Franchise Dealers Act, 15 U.S.C. § 1221, *et seq.* (1956)); *Jimenez* v. *BP Oil, Inc.*, 853 F.2d 268 (4th Cir. 1988), *cert. denied*, 490 U.S. 1011 (1989) (market withdrawal by petroleum franchisor did not violate the Federal Petroleum Marketing Practices Act, 15 U.S.C. § 2801, *et seq.* (1982)).

[10] The *Glick* case is also distinguishable in terms of its procedural context. At the outset of that case, plaintiff filed a motion for preliminary injunction. GM opposed the motion and simultaneously filed a motion to dismiss. The district court converted the motion to dismiss into a motion for summary judgment, which was granted. The case thus came to the Second Circuit without any discovery having been taken. The Second Circuit concluded that the dealer was "entitled to discovery and trial *if necessary* to determine whether the heavy-duty truck line was a separate franchise, whether General Motors terminated Glick's franchise without due cause, and whether General Motors breached its contract with Glick." 865 F.2d at 497 (emphasis added). By the

interpreted the New York regulation to reach a different result than that of the Fourth Circuit plainly does not create a conflict between the Circuits. *Layne & Bowler Corp.* v. *Western Well Works, Inc.*, 261 U.S. 387, 393 (1923) (certiorari will be granted only "where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeal"). Nor does either decision, as discussed above, raise any important federal question. For these reasons as well, this case does not merit further review by this Court.[11]

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phrase "if necessary," the Second Circuit recognized that summary judgment might be appropriate once the plaintiff had an opportunity for discovery.

[11] There is likewise no conflict between the decision below and the Third Circuit's decision in *Cassidy Podell Lynch, Inc.* v. *SnyderGeneral Corp.*, 944 F.2d 1131 (3d Cir. 1991). *See* Pet. at 8, 14 n.7. That case involved neither the Maryland Transportation Code nor summary judgment standards. Rather, the Third Circuit simply upheld a jury verdict finding that the plaintiff had been awarded a "franchise" by the defendant within the meaning of the New Jersey Franchise Practices Act, N.J. Stat. Ann. § 56:10-1, *et seq.* Likewise, *Johnson* v. *Oroweat Foods*, 785 F.2d 503 (4th Cir. 1986), cited by Central, presents no conflict. Even if it did, conflicts within a single Circuit do not provide a basis for granting the Petition. *Davis* v. *United States*, 417 U.S. 333, 340 (1974).

Conclusion

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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February 7, 1992

Appendix

Companies Listed Pursuant to Supreme Court Rule 29.1

AC Bakony Kft. (Hungary)
Alpha Mariah, Inc. (USA)
Asset Leasing GmbH (Germany)
Atlantic Satellites, Ltd. (Ireland)
Aura s.r.1. (Italy)
Banque de Credit General Motors (France)
Beijing International Information Processing Company Limited (Peoples Republic of China)
Carus Grundstucks-Vermietungsgesellschaft mbH & Co. Object Kuno 65 KG (Germany)
Carus Grundstucks-Vermietungsgesellschaft mbH & Co. Object Leo 40 KG (Germany)
Comlinear Corporation (USA)
Convesco Vehicles Sales GmbH (Germany)
DRB s.a./n.v. (Belgium)
Diavia s.p.A. (Italy)
Fabrica Colombiana de Automotores S.A. ("Colomotores") (Colombia)
GM Allison Japan Limited (Japan)
G.M.A.C. Financiera de Colombia, S.A. Compania de Financiamiento Comercial (Colombia)
General Motors Bankgesellschaft mbH (Austria)
General Motors del Ecuador S.A. (Ecuador)
General Motors Hungary Automotive Distribution Limited Liability Company (Hungary)
(a/k/a General Motors Hungary (Distribution) Ltd.
General Motors Hungary Automotive Manufacturing Limited Liability Company (Hungary)
(a/k/a General Motors Hungary (Manufacturing) Ltd.

HBC (USA)
IBC Vehicles Limited (United Kingdom)
ITC Inland Teknik Oto Yan Sanayi Sirketi (Turkey)
Kabelwerke Reinshagen GmbH (Germany)
Kabelwerke Reinshagen Werk Berlin GmbH (Germany)
Kabelwerke Reinshagen Werk Newmarkt GmbH (Germany)
LEA GP Incorporated (USA)
Metal Casting Technology, Inc. (USA)
Millbrook Pension Management Ltd. (England)
Neodata Holdings, Inc. (USA)
Nippon EDS, Ltd. (Japan)
Opel-Automobilwerk Eisenach-PKW GmbH (Germany)
Opel-Wohnbau GmbH (Germany)
Packard CTA Pty. Ltd. (Australia)
Packard Electric Vas kft (Hungary)
Societe Francaise des Amortisseurs de Carbon S.A. (France)
Truck and Bus Engineering U.K., Limited (USA)